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ABSTRACT

The Copyright Act of 1976, particularly the guidelines on fair use, did much to clarify the ambiguity of the 1909 Copyright Act in relation to new electronic media. Although some specific guidelines for teachers were included, it should be noted that microcomputers and disk drives were not yet widely available in 1976. Because experts were divided on what direction the protection of computer programs should take, Congress turned the question of copyright over to the National Commission on New Technological Uses (CONTU). Based on the recommendations of CONTU, the Copyright Act was amended in 1980 to define computer programs as literary works and to specify how a computer program may be used. Several points should be noted by educators: (1) it is illegal for anyone other than the owner of the program to make duplicate copies; (2) although a back-up copy may be produced, this is an archival copy and should not be used on another computer; (3) it is illegal to make multiple copies without a licensing agreement; (4) it is illegal to boot a series of microcomputers sequentially with a single disk; and (5) it is illegal to modify a program so that it may be accessed by multiple users via networking. Five references are listed. (MES)

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It has become somewhat of a cliché but the statement continues to ring true that "...the only people who aren't illegally copying software are those that don't know how." In some instances illegal copying has occurred in epidemic proportions. Some say this is due to ignorance of the law or blame the publishers for high costs and for not providing back-up copies. Others point to the fact that many publishers will not let educators preview software for possible purchase, an act which may lead to illegal copying. For whatever reason, it is an admitted fact that teachers are making illegal copies of copyrighted computer software. The excuses are varied but usually cluster around two or three expressions such as, "I don't care, the school doesn't have any money and it's for the children; It's legal because we are not selling them to anyone; It didn't cost the publisher anything because we wouldn't have bought it anyway."

The term pirate has drifted into computer terminology and is used frequently to conceal the more accurate word, "stealing." Piracy presents a romantic, swashbuckling image of the "steal from the rich to give to the poor" mentality. The term "thief," however, doesn't quite have that romantic ring to it.

Leroy Finkle, a computer coordinator for a California school district, expressed this concern:

I am equally concerned that we are teaching our students illegal and immoral lessons when we use stolen software in our classrooms.

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How long will it take a 12 year-old to figure out that the software you are using without documentation or a publisher's label on the disk is stolen? What kind of lesson did you just teach?

WHAT IS THE LAW?

The existence of computing software in the classroom has raised many questions. Can teachers make copies of programs for classroom use? Do school systems have copying privileges that private citizens do not? Can a program be modified or adapted to fit a particular educational setting? What about "fair use"?

The Copyright Act of 1976 was a product of many years of effort to replace the 1909 copyright law that was ill suited for such technological developments as cable television, photocopying machines, and computers. The 1976 Copyright Act, particularly the guidelines on fair use, did much to clarify the ambiguity of the 1909 Copyright Act in relation to some of the newer electronic media. Although it had specific guidelines for teachers in some areas, it is worth note to mention that microcomputers and disk drives were not even available for purchase until 1977. They were still in the fetal stage of development and sold only to electronics enthusiasts in kit form. The 1976 Copyright Act serves as a testimonial to the difficulty of creating laws to accommodate new and future technologies.

Because experts were divided on what direction the protection of computer programs should take, Congress turned the question of copyright over to the National Commission on New Technological Uses (CONTU) for study and recommendations. Based on the recommendations of CONTU, the Copyright Act was amended in December of 1980. The amendments made two significant changes. Section 101 was amended to specifically define computer programs as literary works. Section 101 also defined a computer program as "...a set of statements or instructions

to be used directly or indirectly in a computer in order to bring about a certain result."

Section 117 was rewritten and describes how a computer program may be used. Notwithstanding the provisions of Section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaption of that computer program provided:

- (1) that such new copy or adaption is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner or
- (2) that such new copy or adaption is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Section 117 refers to both tangible and intangible copies which can be a source of confusion for some people. The intangible copy is the copy created by booting the disk and is usually stored only temporarily in RAM. This is the basic interpretation of part (1) above.

Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

Section 117 has done much to create a new specialization within the legal field called computer law. Computer law experts have already given many contradictory interpretations of Section 117. Section 117, however, has several points that are sufficiently clear so as not to be open to interpretation.

These points should be noted by educators:

(1) It is illegal to make duplicate copies by anyone other than the owner of the program. Copies may not be made from borrowed, rented or "for preview" purposes.

(2) Although Section 117 specifies that a back-up copy may be produced, it clearly specifies it is an archival copy and not to be used on another computer.

(3) It is illegal to make multiple copies of a disk without a licensing agreement.

(4) It is illegal to sequentially boot series of microcomputers with a single disk.

(5) It is illegal to modify a program so that it may be accessed by multiple users via networking.

The "stated" danger of illegal copying is that quality software will cease to exist if the publishers can not realize a profit. This is no different from the arguments made concerning all other types of instructional materials. Magnetic disks, however, lend themselves to easy copying and part of becoming computer literate is learning how to copy software for legal back-up copies. It is doubtful that instructional software will cease to exist once the marketplace and the potential for profit remains enticing. Eventually the program will be resolved by the technology itself. Until then it gives educators the chance to demonstrate their professionalism instead of promoting bands of marauding pirates rampaging through the area in search of educational software to copy.

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